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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,284	09/08/2004	Wendy L. Welshans	65,235-004	5283

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EXAMINER

NGUYEN, SON T

ART UNIT PAPER NUMBER

3643

DATE MAILED: 12/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/711,284

Applicant(s)

WELSHANS, WENDY L.

Examiner

Son T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10,11,13,15-17,19-21,23 and 24 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 10,11,13,15-17,19-21,23 and 24 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 08 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 10,11,13,15-17,19-21,23** are rejected under 35 U.S.C. 103(a) as being unpatentable over Tillinghast (2331) in view of Crull (2748747).

For claims 10 & 11, Tillinghast teaches a housing assembly that is capable of being used to farm members of the Order Arachnida in a centralized location to collect silk therefrom, said assembly comprising: a wall (not numbered but in the area of refs. c & e, the strips of wood to build the house) establishing an outer periphery defining a work space (interior of house) having a foot print of a predetermined area and defining a plurality of frames (A) therein, each of said frames (A) defining an open frame space (the open spaces in the area of refs. c,e,A) having a predetermined area that is capable of being used for housing the members of the Order Arachnida to create a web therein; a roof (B) supported by said wall for covering said frames and said work space, and said assembly characterized by a ratio of said predetermined area of said open frame space to said predetermined area of said foot print of at least 1:5 or 1:9 to prevent territoriality of the members of the Order Arachnida (the open spaces near refs. c,e,A and the floor plan of the housing is at least 1:5 or 1:9 ratio). Tillinghast teaches eaves on page 2, line 32. However, Tillinghast is silent about wherein said predetermined

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area of said open frame space is further defined as at least four square feet, the eaves extending perpendicularly beyond said wall a predetermined distance of at least two feet, and a light source disposed within the work space.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the predetermined area of said open frame space of the housing of Tillinghast be defined as at least four square feet, depending on how much air/ventilation the user wishes to circulate in the housing. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the eaves of Tillinghast extend perpendicularly beyond said wall a predetermined distance of at least two feet, depending on how much one wishes to cover the frames from environmental conditions.

Crull teaches a house for rearing worm, the house has a light source 15 to provide light in the house so one can see the surrounding. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a light source as taught by Crull in the house of Tillinghast in order to provide light in the house so one can see the surrounding.

For claims 13 & 23, Tillinghast as modified by Crull (emphasis on Tillinghast) teaches on page 1, lines 93-103 that the predetermined area of said foot print is further defined as at least seventy-five square feet to accommodate for vehicle or hand cart etc.

For claim 15, Tillinghast as modified by Crull (emphasis on Tillinghast) teaches wherein said frames further comprise a top member (thickness of the wood strip

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surrounding the opening), a bottom member (thickness of the wood strip surrounding the opening), and side members (the thickness of ref. A).

For claim 16, Tillinghast as modified by Crull (emphasis on Tillinghast) is silent about wherein said side members, said top member, and said bottom member are each at least three feet long. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have side members, top member, and bottom member of Tillinghast as modified by Crull be each at least three feet long, depending on how big one wishes the opening to be for ventilation.

For claim 17, Tillinghast as modified by Crull (emphasis on Tillinghast) teaches on page 1, lines 93-103, wherein said predetermined area of said foot print is further defined as at least ten feet by ten feet (five feet between frames and at every eighteen or twenty feet, there is a space about five feet across the frames, which indicates that the floor plan is at least 10 by 10).

For claim 19, Tillinghast as modified by Crull (emphasis on Tillinghast) teaches wherein said wall further comprises a plurality of walls (each wood strip) establishing said outer periphery.

For claim 20, Tillinghast as modified by Crull (emphasis on Tillinghast) teaches wherein each of said walls have at least one frame (A) defined therein.

For claim 21, Tillinghast as modified by Crull (emphasis on Tillinghast) teaches wherein each of said walls is further defined as having a plurality of frames (A) defined therein.

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3. **Claim 24** is rejected under 35 U.S.C. 103(a) as being unpatentable over Tillinghast as modified by Crull as applied to claim 10 above, and further in view of Mead (2416037).

Tillinghast as modified by Crull is silent about a netting covering said frames. Mead teaches an enclosure for silkworms in which he employs a netting 38 (see fig. X) to prevent predator such as a bird to prey on the silkworms inside the enclosure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a netting as taught by Mead covering the frames of Tillinghast as modified by Crull in order to prevent predator(s) from preying on the insects contained in the housing.

Response to Arguments

4. Applicant's arguments with respect to claims 10,11,13,15-17,19-21,23,24 have been considered but are moot in view of the new ground(s) of rejection. However, argument pertaining to Tillinghast will be addressed herein.

Applicant argued that Tillinghast teaches away from the invention by housing silkworms disposed centrally in a cocoonery and not in open frame spaces defined in an outer periphery of the work space. As understood by those of ordinary skill in the art, silkworms do not spin webs, instead they spin cocoons made of silk about themselves. Also, silkworms are not territorial and do not exhibit cannibalistic tendencies, i.e., they do not kill one another when housed in close proximity to one another.

The [a)statements of intended use or field of use, b)"adapted to" or "adapted for" clauses, c) "wherein" clauses, or d) "whereby"]clauses are essentially method limitations or statements of intended or desired use. Thus, these claims as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re Casey*, 512 USPQ 235; *In re Otto*, 136 USPQ 458; *Ex parte Masham*, 2 USPQ 2nd 1647.

See MPEP § 2114 which states:

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ 2nd 1647

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. *In re Danly*, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim. Although Tillinghast teaches silkworms, the house of Tillinghast is capable of holding spiders. By adding "to farm...Order Arachnida" to the claim language does not patentably distinguish the claimed structure from Tillinghast. The Tillinghast house can or is capable of housing spiders if one wishes to do so. Spiders can build their webs on the openings in the housing of Tillinghast. It is irrelevant whether the silkworms spin webs or not or territorial or not, because the claim is an apparatus, thus, it is the structural limitation of the apparatus that is relevant and not the intended use of the apparatus.

Applicant argued that Tillinghast explicitly states that these shutters are opened and closed for ventilation purposes and for cleaning debris from the floor. Since the openings are closed with shutters, members of the Order Arachnida are not able to create webs therein.

Again, intended use of the apparatus. One does not necessary have to close the shutters, so when the shutters are left opened, the spiders can build webs therein.

Applicant argued the dimension of the house of Tillinghast does not meet the claimed dimension.

A house comes in various dimension, thus, to choose a dimension that fits the intended use of the house would be obvious to one of ordinary skill in the art.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Son T. Nguyen
Primary Examiner
Art Unit 3643

stn